

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 23 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1.	Whether Reporters of Local Papers may be allowed to see the judgements?	Yes
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2.	To be referred to the Reporter or not?	Yes
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3.	Whether Their Lordships wish to see the fair copy of the judgement?	No
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4.	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?	No
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5.	Whether it is to be circulated to the Civil Judge?	No
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JOSANTONY JOSEPH

Versus

STATE OF GUJARAT

Appearance:

MRS SHILPA J UNWALLA for Petitioner
Mrs. BR Gajjar, APP for Respondent No. 1
Respondent No. 2 served

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/03/98

ORAL JUDGEMENT

Heard learned Advocate Mrs. Shilpa J. Unwalla
appearing for the petitioner and Mrs. B.R. Gajjar,
learned APP appearing for respondent No.1 State.

Respondent No.2 served.

2. That being aggrieved and dissatisfied by the Order passed by learned Special Judge, City Sessions Court, Ahmedabad, dated 15.9.1997, below Exhibits 11 and 89, in Special Case No. 14 of 1993, the petitioner has filed the present Revision Application. That vide impugned order, the learned Special Judge has dismissed both the Applications - Exhibit 11 as well as Exhibit 89 moved by present petitioner as accused No.2 of Special Case No. 14 of 1993.

3. That the present petitioner was appointed as Director of Nehru Yuva Kendra Sangathan, Western Zone, an institute established by Ministry of Human Resources Development, Government of India. That under the said Sangathan, there were various Nehru Yuva Kendras, working as units for youth activities convened by Youth Coordinators. One Mr. R.R. Joshiara was one of the Youth Coordinators of the unit working under Nehru Yuva Kendra Sangathan. That on 27.5.1993, CBI submitted a charge sheet in the court of Special Judge at Ahmedabad against present petitioner and said R.R. Joshiara for having committed offence made punishable under Sections 409, 109 of the IPC and also under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. That the said charge sheet was registered as Special Case No. 14 of 1993 in the City Sessions Court at Ahmedabad. That as per the allegations made in the charge sheet, it was alleged that an advance amount of Rs. 38,000/- was misappropriated during the tenure of said Shri R.R. Joshiara as Youth Coordinator. That at the relevant time, present petitioner though posted as Director of Nehru Yuva Kendra Sangathan, had no power or authority to control the Youth Coordinators or funding of Nehru Yuva Kendra Sangathans.

4. That present petitioner moved an Application Exhibit 11 before the Special Judge and claimed to be discharged from the offence alleged against him in the charge sheet by CBI on the ground that material produced with the charge sheet did not disclose any prima facie case against the present petitioner as alleged. That such application was heard in the year 1993 and 1994, but had remained pending for order. It is contended by the petitioner that thereafter the petitioner moved another Application on 13.3.1997 - Exhibit 89 contending that complaint filed against petitioner is not maintainable for want of requisite sanction as prescribed under Section 197 of the Cr.PC. That the learned Special Judge, City Sessions Court, Ahmedabad, disposed of above

stated both the Applications i.e Exhibit 11 as well as Exhibit 89 by Common Order dated 15th September 1997 and rejected both the applications, and as such, the petitioner has challenged the same in the present petition.

5. Mr. Shilpa J Unwalla, learned advocate appearing for the petitioner has taken me through the impugned order produced on record vide running page 1 to 8 and has urged that though the learned Special Judge has mentioned Application Exhibit 11 in the title and operative part of the order, learned Judge has neither discussed the contents of Application - Exhibit 11 nor has given any reasons for rejection of such application. That there is no mention about the subject matter of Application Exhibit 11 in the entire order, and as such, the impugned order suffers with serious infirmities and the order deserves to be set aside and quashed.

6. It is further submitted that vide letter dated 13th September, 1995, the Deputy Secretary to the Government of India - Mr. Gautam Guha has addressed a communication to Superintendent of Police, CBI, Ashram Road, Ahmedabad, as per copy produced by Annexure-D on running page 9 of the compilation. That through said communication, Deputy Secretary to the Government of India has brought to the notice of Superintendent of Police, CBI, the material fact that present petitioner had no control over the powers to be enjoyed by the Youth Coordinators, who are directly appointed by Human Resources and Development Ministry, Government of India. That present petitioner though working as Zonal Director incharge of the West Zone was restrained from discharging his duties by virtue of the order passed by the Central Administrative Tribunal in a litigation resorted to by the employee of Nehru Yuva Kendra Sangathan. That in view of the said fact present petitioner had no role to play in the said case of misappropriation investigated by CBI and filed a Special Case No. 14 of 1993 in the City Sessions Court at Ahmedabad. That during the submission made to the learned Special Judge in the year 1993 when Exhibit 11 was argued, the petitioner believed that he would be discharged and would not be required to attend the court in connection with the present matter. However, on account of rejection of above stated both applications, the petitioner who is exonerated by original complainant, has unnecessarily to undergo harassment by attending the court, and as such, the present petition should be allowed and the impugned order dated 15th September, 1997 passed by the learned Spl. Judge, City Sessions Court, Ahmedabad in Spl. Case No.

14 of 1993 be quashed and set aside.

7. Learned APP Mrs. B.R. Gajjar has submitted that the petitioner has failed to produce the copy of the Application - Exhibit 11 nor has produced the material produced with the chargesheet by the CBI before the Spl. Judge and as such in the absence of any material, no submission could be accepted as urged on behalf of the petitioner. It is further submitted that the letter dated 13.9.1995 was referred to and relied on by the petitioner in the present case, was not produced before the Spl. Judge when Application Exhibit -11 was presented and argued and thereby submission based on such letter cannot make any difference. However, learned APP has left the matter to the discretion of the court.

8. Respondent No.2 CBI has failed to appear though served and, therefore, no submission has been made on behalf of respondent No.2.

9. That on mere perusal of impugned order it appears that on account of confusion, due to lapse of time, learned Spl. Judge appears to have missed to deal with the contents of Exhibit 11 in the impugned order.

10. That petitioner has a substantial right to claim discharge under Section 227 of the Cr.PC, if there is no sufficient ground to proceed against him in the material produced on record along with the chargesheet. That the court has to decide whether there is prima facie case to proceed against the accused before framing the charge, and if there is no sufficient ground, then the court has to discharge the accused and to give reasons for the same. In the instant case, it appears that the petitioner has suffered a substantial injustice on account of non-decision in respect to Application Exhibit-11 moved to claim discharge from the allegations made in the chargesheet, and thereby, in my opinion, it is a fit case whereby the impugned order should be set aside and quashed and the matter be remanded to Special Judge with a direction to hear the Application - Exhibit 11 de novo after giving opportunities to the parties and to decide the same as early as possible but not later than 30th April, 1998.

11. It may be noted that the learned Special Judge has also decided Application Exhibit 89 vide impugned Order. That as the matter is pending before the Spl. Judge for further prosecution, I do not deem it just to

discuss merits or demerits about the reasons assigned in respect to the Application - Exhibit 89. However, learned Spl. Judge shall also decide Application Exhibit 89 de novo after hearing both the parties.

12. That vide Para 3(3), the petitioner has prayed a relief to grant permission to leave India as he has to attend a seminar related to his professional work. The petitioner shall be at liberty to move separate application before the Spl. Judge to obtain such permission.

13. On the basis of the above stated discussion, the Criminal Revision Application succeeds to the aforesaid extent. Rule is made absolute to the aforesaid extent only. No order as to costs.

p.n.nair